

By Mail and  
E-Filing

October 21, 2003

Mary Cottrell, Secretary  
Department of Telecommunications  
and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

Re: MA DTE 03-59

Dear Secretary Cottrell:

DSCI Corporation ("DSCI") and InfoHighway Communications Corporation ("InfoHighway")(collectively, the "Carriers") jointly request that the Hearing Officer reconsider his October 20, 2003 e-mail ruling permitting Verizon to file response comments to the Carriers' Verified Offer of Proof on or before October 27, 2003. (An original and eight copies of this letter are enclosed.) The Hearing Officer ruled on Verizon's request filed late on Friday afternoon before the Carriers had an opportunity to file their opposition. The Hearing Officer should reconsider the ruling for the following reasons.

Verizon has now had the opportunity to make two filings stating its view of the facts and law applicable to this investigation, namely, the September 16 filing on the scope and proposed procedures and Friday's request to respond to the Carriers' Offer of Proof. The Carriers in turn have now made two detailed submissions, the September 16, 2003 filing on the scope and proposed procedures for this docket and the additional October 15, 2003 Offer of Proof which have set forth, in increasing detail (much of it submitted under protective order in the Offer of Proof), that (1) the Carriers have very substantial DS-1 UNE-P enterprise customer bases in the Commonwealth (arguably the highest level of DS-1 competition in the United States) that include many businesses and facilities that would be harmed by service disruption, (2) Verizon has no process in place whatsoever to transition those customers in seamless fashion to arrangements utilizing CLEC-provided switching arrangements, (3) Verizon has failed to respond to repeated requests by DSCI and other CLECs to establish even a trial to determine how such transitions to CLEC arrangements could be accomplished and, thus, (4) the Carriers and

other CLECs are, without question, operationally impaired with respect to their existing DS-1 customer bases under the standards established in the Federal Communications Commission's Triennial Review Order ("TRO"), facts that amply justify a waiver petition to the FCC. The Carriers have also explained that the additional investigation of operational and economic impairment with respect to new DS-1 customers in particular geographic areas cannot possibly be accomplished within the 90 day period established by the FCC--since the analysis requires inputs that are not required to be established until the end of the mass markets investigation--and that a separate waiver request based on that fact also is justified.

Respectfully, the Department has more than enough filings from the Carriers and Verizon to make the threshold decision whether to proceed with this docket. The Carriers strongly believe that their detailed showings to date are more than adequate to justify a Department finding that this docket should proceed so that the Carriers' claims, and any Verizon factual or legal rebuttal, can be reviewed by the Department in the upcoming weeks to determine whether a FCC waiver is warranted. A substantial segment of the competitive business telecommunications market in the Commonwealth is at risk of total loss and grave customer disruption because this market is tied to Verizon's network and Verizon has failed to establish any process for migrating these customers off of its network to CLEC switching facilities. The FCC has also made clear that the specific elements listed in the TRO for determining operational and economic impairment are not an exclusive list. See TRO at ¶ 456. Affording Verizon yet another opportunity to offer factual and legal arguments -- which the Carriers will no doubt have to seek leave to respond to ensure that the Department has an accurate record when it makes the critical decision whether to proceed with this docket -- will just eat into the limited 90-day period the Carriers are given under the TRO to convince the Department to take action with respect to the DS-1 enterprise market and to prepare a detailed waiver petition to the FCC.<sup>1</sup>

According, the Carriers respectfully request that the Hearing Officer reconsider the decision to afford Verizon yet another opportunity to prepare a filing in advance of the Department's decision whether to proceed with this docket. In the event the Hearing

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<sup>1</sup> The ongoing temporary Stay ordered by the Second Circuit will extend the 90-day period unless and until it is modified or dissolved by the Second Circuit or other appellate court with jurisdictional authority. The Carriers note that the Stay was not granted inadvertently or with improper process. The participating CLECs properly served the FCC with both the Stay motion and a motion to transfer the Stay request and appeal to the Circuit Court assigned responsibility for the consolidated TRO appeals. The fact that a Stay of the 90-day proceeding was being sought was publicized and widely discussed in the trade press.

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Officer declines to reconsider his ruling, the Carriers reserve the right to request an opportunity to respond to new arguments raised in Verizon's filing.

Very truly yours,

Robert J. Munnely, Jr.

Enc.

cc: Jesse Reyes, Hearing Officer